

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kaitlin Campbell	Team: Squad #13	CCRB Case #: 201708578	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/17/2017 12:32 AM	Location of Incident: In front of 441 East 187th Street	Precinct: 48	18 Mo. SOL 2/17/2019	EO SOL 2/17/2019	
Date/Time CV Reported Wed, 10/18/2017 10:12 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/18/2017 10:12 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Antonio Martinez	20114	962584	048 PCT
2. POM Rudolf Lumezi	11474	949231	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christophe Davis	1475	938323	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Antonio Martinez	Abuse: Police Officer Antonio Martinez stopped § 87(2)(b)	
B.POM Rudolf Lumezi	Abuse: Police Officer Rudolf Lumezi stopped § 87(2)(b)	
C.POM Antonio Martinez	Force: Police Officer Antonio Martinez used physical force against § 87(2)(b)	
D.POM Rudolf Lumezi	Force: Police Officer Rudolf Lumezi used physical force against § 87(2)(b)	
E.POM Rudolf Lumezi	Force: Police Officer Rudolf Lumezi used physical force against § 87(2)(b)	
F.POM Antonio Martinez	Abuse: Police Officer Antonio Martinez did not obtain medical treatment for § 87(2)(b)	
G.POM Rudolf Lumezi	Abuse: Police Officer Rudolf Lumezi did not obtain medical treatment for § 87(2)(b)	

Case Summary

On October 18, 2017, § 87(2)(b) called the CCRB and filed this complaint.

On August 17, 2017, at approximately 12:30 a.m., § 87(2)(b) was in the vicinity of 441 East 187th Street in the Bronx when Police Officers Antonio Martinez and Rudolf Lumezi of the 48th precinct stopped him (**Allegations A and B: Abuse of Authority**, § 87(2)(g) PO Martinez and PO Lumezi took § 87(2)(b) to the ground to handcuff him (**Allegations C and D: Force**, § 87(2)(g) PO Lumezi pushed § 87(2)(b)'s face into the ground (**Allegation E: Force**, § 87(2)(g) § 87(2)(b) began bleeding from a cut on his left eyebrow. PO Martinez and PO Lumezi failed to provide § 87(2)(b) with medical attention (**Allegations F and G: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was transported to the 48th Precinct stationhouse, where another officer decided to have him transported to § 87(2)(b) § 87(2)(b).

No video footage of this incident was obtained.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Antonio Martinez stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Rudolf Lumezi stopped § 87(2)(b)

Allegation (C) Force: Police Officer Antonio Martinez used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Rudolf Lumezi used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was arrested for § 87(2)(b), and that he was summonsed for § 87(2)(b). Although § 87(2)(b) was arrested, he was not charged with the underlying crime the officers said he committed—drinking in public—which initiated the stop, and which § 87(2)(b) denied doing.

According to § 87(2)(b) he left his friend's house at § 87(2)(b) and was walking home to § 87(2)(b). At the intersection of Third Avenue and East 187th Street, § 87(2)(b) crossed through the BP station parking lot, and turned left to head south on Washington Avenue. When he crossed East 186th Street he heard a car stop behind him, and then saw PO Martinez and PO Lumezi in uniform, exiting from that police car and walking towards him. § 87(2)(b) put his hands up and PO Lumezi grabbed his right hand. PO Lumezi pulled § 87(2)(b)'s hand behind him and pushed him forward and down as PO Martinez pushed § 87(2)(b)'s left shoulder down. § 87(2)(b) lost his footing, fell, landed on his chest, and lay on the ground without moving. Both officers yelled for § 87(2)(b) to stop resisting and he told them he was not resisting and yelled for them to get off of him. PO Martinez and PO Lumezi handcuffed § 87(2)(b), picked him up off the ground, searched him, and recovered two bags of marijuana from his pockets. PO Lumezi pointed nowhere in particular to “some alcoholic beverage” and told § 87(2)(b) it was his. § 87(2)(b) told PO Lumezi he did not see the supposed alcoholic beverage he was pointing to and denied drinking alcohol that night.

According to PO Martinez, he and PO Lumezi saw § 87(2)(b) standing next to a woman on the sidewalk in front of 441 East 187th Street—at the corner of Park Avenue, about a

block away from where § 87(2)(b) said he was stopped—holding clear plastic cups. After observing § 87(2)(b) for about a minute, he and PO Lumezi got out of their car to see whether § 87(2)(b) was drinking alcohol. PO Lumezi asked § 87(2)(b) if he had been drinking and asked for his I.D. Other than the fact that § 87(2)(b) smelled like alcohol, there was nothing about him that made PO Martinez suspect he was intoxicated. § 87(2)(b) told PO Lumezi he did not have I.D. and PO Lumezi told him that if he did not provide I.D. they would need to bring him to the precinct stationhouse. § 87(2)(b) shrugged his shoulders and exhaled loudly. PO Lumezi reached for one of § 87(2)(b)'s arms to put him in handcuffs because § 87(2)(b) did not voluntarily put his hands behind his back. PO Martinez did not remember whether PO Lumezi asked more than once for § 87(2)(b)'s I.D. but said PO Lumezi grabbed § 87(2)(b)'s arm within five minutes of initially approaching him and that § 87(2)(b) had not, in the course of that time, done anything aggressive or threatening.

PO Martinez grabbed § 87(2)(b)'s left arm and PO Lumezi grabbed his right arm. § 87(2)(b) jerked his arms out of the officers' grips for about thirty seconds and then PO Martinez and PO Lumezi began to bring § 87(2)(b) toward the ground. PO Lumezi initiated the takedown, but PO Martinez did not know how he did so. PO Martinez let go of § 87(2)(b)'s left arm as PO Lumezi and § 87(2)(b) fell to the ground. § 87(2)(b) landed on the ground, chest-first. PO Martinez dropped to his knees, grabbed § 87(2)(b)'s left arm again, and helped PO Lumezi bring it behind § 87(2)(b)'s back.

According to PO Lumezi, he and PO Martinez were driving slowly down East 187th Street when they saw § 87(2)(b) and a woman standing on the sidewalk. PO Lumezi overheard the woman say to § 87(2)(b) “You better not start shit with these cops,” and § 87(2)(b) respond, “Fuck you.” Because this made PO Lumezi suspicious, he and PO Martinez exited the car and approached § 87(2)(b). PO Lumezi smelled alcohol but he initially did not remember whether § 87(2)(b) or the woman were holding plastic cups and, if they were, he did not check to see what was inside of them. PO Lumezi later said he saw § 87(2)(b) drink from a plastic cup before he got out of the car, and that he said to § 87(2)(b) “you got an open container?” upon approaching him. § 87(2)(b) did not admit or deny that he was drinking alcohol. PO Lumezi asked § 87(2)(b) for his I.D., § 87(2)(b) asked why, and PO Lumezi told him he had an open container and was drinking outside. § 87(2)(b) opened his wallet and began to hand PO Lumezi a photo-less paper I.D. PO Lumezi saw in the wallet § 87(2)(b)'s state I.D.; he pointed to it and told § 87(2)(b) he wanted “that one.” § 87(2)(b) tried to hand PO Lumezi his wallet and PO Lumezi did not take the wallet because he feared § 87(2)(b) could accuse him of stealing his money. PO Lumezi told § 87(2)(b) he did not want the wallet, only the I.D. § 87(2)(b) walked to the car and turned so that his back was leaning against the passenger door. PO Lumezi stood in front of § 87(2)(b). § 87(2)(b) placed his wallet on the windshield of the car, made a fist with one of his hands and swung once at PO Lumezi. PO Lumezi grabbed § 87(2)(b)'s forearm, § 87(2)(b) pushed PO Lumezi against the car, and PO Lumezi grabbed one of § 87(2)(b)'s arms to place him in handcuffs as PO Martinez grabbed the other. § 87(2)(b) thrust his arms in front of him and tried to break the officers' grip. PO Lumezi said he and § 87(2)(b) “wrestled around for a little bit” and fell to the ground. PO Lumezi said he wanted § 87(2)(b) on the ground because § 87(2)(b) had swung at him and was therefore a threat to his and PO Martinez's safety. PO Lumezi did not remember what part of his body hit the ground but said § 87(2)(b) landed chest-first and he landed on top of § 87(2)(b). PO Lumezi did not know where his knees were when he landed. PO Lumezi grabbed § 87(2)(b)'s hands

and tried to bring them behind his back and § 87(2)(b) tried to throw PO Lumezi off of him and tried to head-butt him. PO Lumezi said he placed his hand on § 87(2)(b)'s head and pressed it against the ground to stop him from resisting and did this for "a few seconds" while he and PO Martinez were placing § 87(2)(b) in handcuffs, and PO Lumezi was pressing his knee into § 87(2)(b)'s back or chest.

The arrest report and criminal complaint report, filled out by PO Martinez, listed § 87(2)(b)'s charges as § 87(2)(b), and noted in the narrative section that § 87(2)(b) was observed with an open container, refused to give I.D., assumed a fighting stance, and wrestled officers to the ground after officers grabbed his wrist (Board Review 01)(Board Review 02). The arrest report, the criminal complaint report, the aided report, the TRI report, PO Lumezi's memo book, and PO Martinez's memo book do not mention that § 87(2)(b) swung at PO Lumezi (Board Review 07)(Board Review 08)(Board Review 09)(Board Review 10). Each report also noted that a search incident to lawful arrest recovered two small plastic bags of marijuana, and property vouchers confirmed this (Board Review 03). PO Martinez completed the arrest paperwork but he did not know why the open container and unlawful possession of marijuana charges were not included on the arrest report. PO Lumezi said § 87(2)(b) was not charged with the open container or unlawful possession of marijuana in the arrest report because the quantity of marijuana § 87(2)(b) was carrying did not amount to criminal possession of marijuana. PO Lumezi said he only supposed but did not know this because he was at the hospital while the arrest report was being filled out.

Patrol Guide Procedure 212-11 states that an officer may conduct a stop when he has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime (Board Review 06).

§ 87(2)(g)

Allegation (E) Force: Police Officer Rudolf Lumezi used physical force against § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) said that, upon landing on the ground, an officer placed one hand on the right side of his and pushed the left side of his face against the concrete, maintaining pressure for one to two minutes. § 87(2)(b) suffered a cut to his left eyebrow, possibly from this, and he bled. Although the description § 87(2)(b) provided of this officer fit PO Martinez's description, the investigation determined the officer was PO Lumezi because PO Lumezi said he held § 87(2)(b)'s face against the ground.

As described above, PO Lumezi said he placed his hand on § 87(2)(b)'s head against the ground for "a few seconds" while he and PO Martinez were placing § 87(2)(b) in handcuffs. PO Martinez said he did not see PO Lumezi do this.

Patrol Guide Procedure 221-01 states that an officer is permitted to use force to gain custody or control of a subject (Board Review 05).

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Antonio Martinez did not obtain medical treatment for § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Rudolf Lumezi did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) said he noticed he was bleeding from his face shortly after his face hit the concrete and that he asked PO Martinez and PO Lumezi if they could bring him to the hospital before he was put in the car. § 87(2)(b) said no officer responded to his request. § 87(2)(b) was transported to the stationhouse, and placed in a holding cell, where he continued to bleed from his eyebrow. § 87(2)(b) said he did not ask anyone for medical attention but an officer kept giving him tissues. About an hour after he had been at the stationhouse, an officer in a white shirt said he needed to go to the hospital. Shortly after, § 87(2)(b) was transported to the hospital.

Medical records were requested from § 87(2)(b) despite § 87(2)(b) declining to initial the section of the HIPAA form authorizing that the records include alcohol/drug treatment, mental health information, and HIV-related information. The records will be added to the case file should they be received.

PO Martinez said there was a little blood on § 87(2)(b)'s face before he was put in the car, but he did not hear of § 87(2)(b) complain of any injuries until he was back at the stationhouse. PO Martinez did not recall whether § 87(2)(b) said anything about being hurt on scene but said he asked for medical attention after he was placed in a holding cell at the precinct stationhouse.

PO Lumezi said he did not notice that § 87(2)(b) was injured or bleeding because, after § 87(2)(b) was placed in handcuffs, PO Lumezi was concerned a riot would start because a crowd had gathered in the course of him being arrested. PO Lumezi called backup and, shortly after, additional officers and Sgt. Christopher David arrived. § 87(2)(b) was transported back to the 48th Precinct stationhouse. PO Lumezi did not remember § 87(2)(b) complaining of any injuries on the way there. About a half hour after the officers had arrived to the stationhouse, PO Lumezi told the desk sergeant that § 87(2)(b) was bleeding. EMS arrived shortly after and brought § 87(2)(b) accompanied by PO Lumezi, to § 87(2)(b).

According to the event, backup was called at 12:24 a.m., § 87(2)(b)'s official arrest time was 12:32 a.m., an EMS unit was dispatched at 1:19 a.m. and arrived in front of 441 East 187th Street at 1:24 a.m.. EMTs put a call over the radio asking where EMS was needed, a call came back telling them the location had changed and to come to the 48th Precinct stationhouse.

The EMS unit arrived to the stationhouse at 1:40 a.m. and left for § 87(2)(b) with § 87(2)(b) at 2:00 a.m. (Board Review 04).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint.
- In the course of his seven-year tenure with the NYPD, PO Lumezi has been the subject of two previous CCRB complaints and five allegations. § 87(2)(g)
- In the course of his one-year tenure with the NYPD, this is PO Martinez's first CCRB complaint.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because of the arrest.
 - A FOIL request to determine whether a Notice of Claim was filed was submitted to the NYC Comptroller on November 28, 2017. The response will be included in the case file upon its return to the agency.
 - § 87(2)(b), § 87(2)(c)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Squad No.: 13

Investigator: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer:

Signature

Print Title & Name

Date